Ironworkers Local Union No. 40 of the International Association of Bridge, Structural and Ornamental Iron Workers *and* Unique Rigging Corporation *and* GTI Harbor Trucking & Rigging, Inc. and Local Union No. 638 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada. Cases 2–CD–889 and 2–CD–892

April 28, 1995

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

The charges in this Section 10(k) proceeding were filed on August 22, 1994, by Unique Rigging Corporation (Unique), in Case 2–CD–889, and on September 2, 1994, by GTI Harbor Trucking & Rigging, Inc. (GTI), in Case 2–CD–892, alleging that the Respondent, Ironworkers Local No. 40 of the International Association of Bridge, Structural and Ornamental Iron Workers (Ironworkers Local 40), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Unique and GTI to assign certain work to employees represented by Local 40 rather than to employees represented by Local Union No. 638 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Steamfitters Local 638). A hearing was held on October 19 and 21, 1994, before Hearing Officer Nicholas H. Lewis.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Unique, a New York corporation with a place of business in Long Island City, New York, is engaged in the business of rigging mechanical equipment. It annually receives goods, products, and supplies valued in excess of $50,000 from points directly outside the State of New York.

GTI, a New York corporation with an office and place of business in Maspeth, New York, is engaged in the business of rigging and trucking mechanical equipment. It annually receives goods, materials, and supplies valued in excess of $50,000 directly from points outside the State of New York. The parties stipulated, and we find, that Unique and GTI are engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Ironworkers Local 40 and Steamfitters Local 638 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

As indicated, both Unique and GTI rig mechanical equipment, such as pipe, fittings, valves, chillers, boilers, cooling towers, and air conditioners, for installation at construction jobsites. Unique contracted to perform the rigging of air-conditioning mechanical equipment on jobsites located at 27 West 23rd Street and 527 West 22nd Street in New York City. Unique scheduled its own employees, who are represented by Steamfitters Local 638, to perform the work on August 20, 1994.

Unique Vice President Richard Kaye testified that individuals representing Ironworkers Local 40 appeared at both jobsites on the morning of August 20. They claimed the right to perform the rigging work. At 27 West 23rd Street, Kaye ordered his foreman to shut down the job after the foreman expressed concern about the potential for physical confrontation. At 527 West 22nd Street, work ceased after the Ironworkers Local 40 members began picketing. In both instances, the employees of Unique left the jobsites without completing their work.

GTI contracted to rig and hoist a cooling tower for installation on the roof of the Federal Reserve Bank in New York City on August 27, 1994. It assigned two steamfitters to work in a crew with two steamfitters employed by mechanical contractor P.J. Mechanical. Representatives of Ironworkers Local 40 appeared at the jobsite and challenged the GTI employees to show their union books. The Ironworkers' representatives then established a picket line. Work at the site ceased because the crane operator refused to work on a picketed site. Work resumed when the general contractor at the site agreed to put two ironworkers on its payroll for the day.

B. *Work in Dispute*

The disputed work involves the rigging of mechanical equipment on jobsites located at 27 West 23rd Street, 527 West 22nd Street, and the Federal Reserve Bank in New York City.

C. *Contentions of the Parties*

Ironworkers Local 40 argues that its representatives did not engage in coercive conduct within the meaning of Section 8(b)(4) of the Act. It claims that they merely challenged employees at the jobsites in question to produce proof of union membership and that they picketed at some of those jobsites in protest of perceived nonunion conditions. Ironworkers Local 40 further contends that all parties to this dispute are contrac-

tually bound to the Building Trades Employers Association's (BTEA) New York Plan for the Resolution of Jurisdictional Disputes. Finally, Ironworkers Local 40 alleges that it has contractual relations with both Unique and GTI that justify an award of the work in dispute to employees whom it represents.

Unique, GTI, and Steamfitters Local 638 contend that: a jurisdictional dispute exists; there is reasonable cause to believe that Ironworkers Local 40 engaged in picketing and other coercive conduct in violation of Section 8(b)(4); no voluntary means of dispute resolution binding on all parties exists; and, on the merits of the dispute, the Board should award the work in dispute to employees represented by Steamfitters Local 638 based on the factors of collective-bargaining agreements, employer preference and past practice, economy and efficiency of operations, and potential job loss.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute under Section 10(k) of the Act it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

The parties stipulated at the hearing, and we find, that there are competing claims to the work in dispute between employees represented by Steamfitters Local 638 and employees represented by Ironworkers Local 40. We further find reasonable cause to believe that representatives of Ironworkers Local 40 engaged in picketing and other coercive activity at all three jobsites with an object of forcing the employers to reassign the work in dispute to employees represented by it.[1] Consequently, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

With respect to the issue of whether a voluntary means for resolution of the jurisdictional dispute exists, it is undisputed that both Unique and GTI are signatories to individual employer collective-bargaining agreements with Steamfitters Local 638. Article three of each agreement states that jurisdictional disputes that are not covered by decisions of the BTEA Handbook, commonly known as ''the Green Book,'' shall be adjusted pursuant to the New York Plan for the Resolution of Jurisdictional Disputes.

Both Steamfitters Local 638 and Ironworkers Local 40 are also bound to the terms of the New York Plan. Steamfitters Local 638 Business Agent William Abbate testified, however, that the Plan's procedures for peaceful resolution of a jurisdictional dispute cannot be invoked in the event of jurisdictional picketing or other coercive activity by one of the unions involved. This testimony is uncontradicted and is at least partially corroborated by the statement in article three of the Steamfitters Local 638 contract that ''pending determination of any dispute under the New York Plan for the settlement of jurisdictional disputes . . . the members of the union shall remain at work on the project without change in status.'' Based on this evidence and on the aforementioned evidence of coercive conduct by Ironworkers Local 40, we find that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making a determination of the dispute.

1. Collective-bargaining agreements

As previously stated, both Unique and GTI have a collective-bargaining agreement with Steamfitters Local 638. These contracts are effective July 1, 1993, through June 30, 1996. Each contains rule XV-A, a uniform provision in all Steamfitters Local 638 contracts, which specifically provides for the performance of rigging work by steamfitters.

Section 2 of the Ironworkers Local 40 standard form collective-bargaining agreement also refers to rigging work. The work specifically described as within the craft jurisdiction of Ironworkers Local 40 does not, however, include the work in dispute at the three jobsites here, i.e., the mechanical rigging and hoisting of air-conditioning equipment and a cooling tower for installation. Furthermore, it is undisputed that neither Unique nor GTI has signed a collective-bargaining agreement with Ironworkers Local 40.

Ironworkers Local 40 nevertheless claims that it has a collective-bargaining relationship with both employers. It contends that Unique bound itself to the terms of a 1990–1993 master collective-bargaining agreement

[1] It is well established that picketing falls within the scope of Sec. 8(b)(4)(D) so long as one object is to coerce an employer to assign work to employees represented by a particular union rather than to employees represented by another union. See, e.g., *Teamsters Local 50 (Schnabel Foundation)*, 295 NLRB 68 (1989). It is irrelevant whether another object of the picketing might have been to protest the use of nonunion labor, as alleged by Ironworkers Local 40 here. See *Plasterers Local 594 (Tectonics Engineering)*, 286 NLRB 259, 260 (1987).

by executing a benefit fund participation agreement on April 17, 1991, and by purchasing 48 hours' worth of fringe benefit fund stamps on June 15, 1993, for work performed within the jurisdiction of a sister local. It further claims that Unique has never given the contractual notice required to prevent automatic renewal of the terms of the master agreement. With respect to GTI, Ironworkers Local 40 contends that GTI agreed to execute a contract in August 1994 and that, although GTI has subsequently failed to sign, it has hired ironworkers, paid them contract wages and benefits, and remitted contractual fringe benefit fund payments. GTI Vice President Noel Fitzgerald admitted hiring employees represented by Ironworkers Local 40 for a job that involved the rigging and hoisting of electrical generators. This was not mechanical rigging.

In light of the evidence that Unique and GTI have current contracts with Steamfitters Local 638 that specifically cover rigging work, that Ironworkers Local 40 has, at best, only a colorable claim of a contractual relationship with these employers, and that the craft jurisdiction section of the Ironworkers Local 40 contract omits reference to the mechanical rigging work in dispute from its specific list of covered rigging work, we find that the factor of collective-bargaining agreements favors an award to employees represented by Steamfitters Local 638.

2. Employer preference and past practice

Both GTI and Unique prefer to have employees represented by Steamfitters Local 638 perform the work in dispute. Witnesses for both employers testified about a consistent past practice of assigning mechanical rigging to these employees. We find that this factor favors an award of the work in dispute to the employees represented by Steamfitters Local 638.

3. Area and industry practice

Unique Vice President Richard Kaye testified that it is industry practice for the mechanical trade responsible for installation to do its own rigging. Steamfitters Local 638 Business Agent Abbate estimated that steamfitters perform approximately 80 percent of the licensed mechanical rigging in the New York City area (the work in dispute is licensed rigging work). He stated that his union has collective-bargaining agreements with three other area employers who use steamfitters to rig and hoist mechanical equipment.

Robert Gerosa, a witness for Ironworkers Local 40, testified that his eponymous company performs a variety of rigging jobs, including occasional mechanical rigging. Gerosa said that he has assigned mechanical rigging to employees represented by Ironworkers Local 40. He acknowledged that these employees have worked in a composite crew with steamfitters employed by the mechanical contractor responsible for installation of the equipment involved, and that he himself employed a composite crew for mechanical rigging work at the World Trade Center. He also acknowledged that mechanical rigging companies that have a contract with Steamfitters Local 638 would employ steamfitters represented by that union to perform the work in dispute.

Based on the foregoing, we find that the factor of area and industry practice favors an award to employees represented by Steamfitters Local 638.

4. Economy and efficiency of operations

Witnesses for the Employers testified that they can use fewer steamfitters to perform a rigging job because these employees work together with steamfitters employed by the mechanical contractor responsible for installation of the equipment involved. Furthermore, efficiencies result from the employees' common knowledge of all aspects of the rigging and installation process. Frequently, Unique and GTI use only a two-person crew on a rigging job. If the Employers had to use employees represented by Ironworkers Local 40, they would have to send a larger crew to work. Ironworkers Local 40 Business Agent Edward Walsh confirmed that a standard crew for rigging work consists of five or six ironworkers and a foreman. We find that the factor of economy and efficiency of operations favors an award to employees represented by Steamfitters Local 638.

5. Loss of jobs

Neither Unique nor GTI currently employs ironworkers on a regular basis. Both have employees represented by Steamfitters Local 638. Unique Vice President Kaye testified that if the work in dispute were assigned to the Ironworkers Local 40, Unique would have to lay off as many as two current employees. Additionally, Kaye testified that he would no longer be able to hire steamfitters as part of temporary crews on weekends. GTI Vice President Fitzgerald testified that his company would have no need for steamfitters if the work in dispute were awarded to employees represented by Ironworkers Local 40. We find the potential adverse impact on the Employers' current employees favors an award of the work in dispute to those employees, who are represented by Steamfitters Local 638.

6. Arbitration awards

Ironworkers Local 40 contends that Unique and GTI are bound, either through their contracts with Steamfitters Local 638 or through their alleged collective-bargaining relationships with Ironworkers Local 40, to honor jurisdictional decisions which have been made pursuant to the New York Plan and published in the BTEA Green Book. It contends that a 1927 arbitration

award in the Green Book is dispositive of the current jurisdictional dispute. The arbitrator there held that employees represented by Riggers Local 170, rather than employees represented by Ironworkers Local 40, were entitled to perform certain rigging work. Ironworkers Local 40 contends that this work came within its jurisdiction when Riggers Local 170 subsequently merged with it. Obviously, this award did not directly involve either the Employers or the current jurisdictional dispute. Furthermore, the award's specific description of materials handled does not include equipment of the type involved in the mechanical rigging work in dispute here. We find this factor is neutral.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Steamfitters Local 638 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, area and industry practice, economy and efficiency of operations, and loss of jobs. In making this determination, we are awarding the work to employees represented by Steamfitters Local 638, not to that union or its members.

Scope of Award

Unique and Steamfitters Local 638 request a broad award covering all present and future jobsites where employees represented by Steamfitters Local 638 are utilized to perform this type of work. Generally, in order to support a broad award, there must be evidence that the disputed work has been a continuing source of controversy in the relevant geographic area, that similar disputes are likely to recur, and that the charged parties have a proclivity to engage in unlawful conduct to obtain work similar to the disputed work. *Electrical Workers IBEW Local 104 (Standard Sign)*, 248 NLRB 1144, 1148 (1980). There is evidence that representatives of Ironworkers Local 40 have challenged the union book status of Unique and GTI employees and have voiced claims for work performed by those employees at other jobsites in 1994, but there is no basis for finding a proclivity to violate the Act during these encounters. We therefore find that the record does not support a broad award. We shall limit our determination and award of the work in dispute to the specific controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Unique Rigging Corporation and GTI Harbor Trucking & Rigging, Inc., represented by Local Union No. 638 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, are entitled to perform the mechanical rigging at the 27 West 23rd Street and 527 West 22nd Street, New York, New York jobsites.

2. Ironworkers Local Union No. 40 of the International Association of Bridge, Structural and Ornamental Iron Workers is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Unique Rigging Corporation or GTI Harbor Trucking & Rigging, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from the date of this decision, Ironworkers Local Union No. 40 of the International Association of Bridge, Structural and Ornamental Iron Workers shall notify the Regional Director for Region 2 in writing whether it will refrain from forcing the Employers, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with the determination.